

WC 05-27

FCC/OMB

JAN 18 2003

WF&G  
STAMP-INREAD INSTRUCTIONS CAREFULLY  
BEFORE PROCEEDINGFEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE

Approved by OMB

3060-0589

Page 1 of 1

(1) LOCKBOX # 358145		SPECIAL USE ONLY	
		FCC USE ONLY	
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) <b>Willkie Farr &amp; Gallagher</b>		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) <b>\$895.00</b>	
(4) STREET ADDRESS LINE NO. 1 <b>1875 K Street, N.W.</b>			
(5) STREET ADDRESS LINE NO. 2			
(6) CITY <b>Washington</b>		(7) STATE <b>DC</b>	(8) ZIP CODE <b>20006</b>
(9) DAYTIME TELEPHONE NUMBER (include area code) <b>(202)303-1111</b>		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) <b>0003-7337-48</b>		(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME <b>Conversent Communications, Inc.</b>			
(14) STREET ADDRESS LINE NO. 1 <b>313 Boston Post Road West</b>			
(15) STREET ADDRESS LINE NO. 2			
(16) CITY <b>Marlborough</b>		(17) STATE <b>MA</b>	(18) ZIP CODE <b>01752</b>
(19) DAYTIME TELEPHONE NUMBER (include area code) <b>(800)275-2088</b>		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) <b>0012-5181-48</b>		(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE <b>CUT</b>	(25A) QUANTITY <b>1</b>	
(26A) FEE DUE FOR (PTC) <b>\$895.00</b>	(27A) TOTAL FEE <b>\$895.00</b>	FCC USE ONLY	
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, _____, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.			
SIGNATURE _____		DATE _____	
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.			
SIGNATURE _____		DATE _____	

SEE PUBLIC BURDEN ON REVERSE

FCC FORM 159

FEBRUARY 2003 (REVISED)

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matter of	)	
	)	
Application for Consent to the Transfer	)	
of Control of the Domestic and	)	File No. _____
International Section 214 Authorizations	)	
held by Conversent Holdings, Inc. and	)	
Mountaineer Telecommunications, LLC	)	

**APPLICATION FOR CONSENT TO THE TRANSFER OF CONTROL OF DOMESTIC  
AND INTERNATIONAL SECTION 214 AUTHORIZATIONS**

Pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and Sections 63.01, 63.03, 63.12, 63.18, and 63.24 of the Commission's rules, 47 C.F.R. §§ 63.01, 63.03, 63.12, 63.18, and 63.24, Conversent Holdings, Inc. ("Conversent") and Mountaineer Telecommunications, LLC ("Mountaineer") hereby apply for FCC consent to the transfer of control of the domestic and international Section 214 authorizations held by Conversent and Mountaineer, as well as their subsidiaries, to a new company to be called Conversent Communications, Inc. ("New Conversent") (collectively, the "Applicants"). As described below, the Applicants believe that the transaction serves the public interest.<sup>1</sup>

**I. DESCRIPTION OF THE PARTIES AND THE TRANSACTION**

Conversent, a Delaware corporation, is the parent company of numerous subsidiaries operating as facilities-based communications providers that offer small and medium-sized businesses a broad portfolio of voice, data, and Internet services. Through its subsidiaries, Conversent serves more than 38,000 business customers in the Northeast in the following states:

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<sup>1</sup> Attachment A separately sets forth the domestic Section 214 information as required by 47 C.F.R. § 63.03(b).

Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

Conversent Communications, LLC ("Conversent Communications"), a Rhode Island limited liability company, is a wholly owned subsidiary of Conversent. Conversent Communications holds an international Section 214 authorization to provide international resale service.<sup>2</sup> While Conversent Communications itself does not provide domestic interstate or international telecommunications services, its wholly owned subsidiaries provide international telecommunications services under the international Section 214 authorization that it holds. The subsidiaries are as follows: Conversent Communications of Connecticut, LLC; Conversent Communications of Maine, LLC; Conversent Communications of Massachusetts, LLC; Conversent Communications of New Hampshire, LLC; Conversent Communications of New Jersey, LLC; Conversent Communications of New York, LLC; Conversent Communications of Rhode Island, LLC; and Conversent Communications of Vermont, LLC. These entities also provide domestic interstate services pursuant to a domestic blanket Section 214 authorization.

In addition, Conversent Communications of Pennsylvania, LLC is also a wholly owned subsidiary of Conversent Communications. Conversent Communications of Pennsylvania, LLC does not currently serve any customers, but it may do so in the future under the international Section 214 authorization held by Conversent Communications.

Conversent Communications Long Distance, LLC ("Conversent Long Distance"), a New Hampshire limited liability company, is also a wholly owned subsidiary of Conversent.

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<sup>2</sup> Conversent Communication's international Section 214 authorization is filed under File No.: ITC-ASG-19991119-00721/ITC 96-303.

Conversent Long Distance holds an international Section 214 authorization.<sup>3</sup> Conversent Long Distance does not currently provide domestic interstate or international telecommunications services and does not have an ownership interest in any entity that provides interstate or international telecommunications services.

Mountaineer is a West Virginia limited liability company. Mountaineer is a parent company to subsidiaries that operate as CLECs in Pennsylvania, Maryland, and West Virginia. Through its subsidiaries, Mountaineer offers a range of telecommunications services, including basic local telephone service, Internet access, broadband service, and virtual private networks to approximately 13,000 residential and business customers.

Mountaineer holds an international Section 214 authorization to provide international resale services.<sup>4</sup> While Mountaineer itself does not provide domestic or international telecommunications services, Mountaineer's wholly owned subsidiaries, FiberNet, L.L.C. ("Fibernet") and FiberNet Telecommunications of Pennsylvania, LLC ("Fibernet PA"), provide international resale service under Mountaineer's Section 214 authorization.<sup>5</sup> Fibernet and Fibernet PA also provide domestic interstate services pursuant to the domestic blanket Section 214 authorization. Fibernet is a West Virginia limited liability company, and Fibernet PA is a Pennsylvania limited liability company.

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<sup>3</sup> Conversent Long Distance's international Section 214 authorization is filed under File No.: ITC-214-19990210-00081.

<sup>4</sup> Mountaineer's international Section 214 authorization is filed under File No.: ITC-224-20000403-00192.

<sup>5</sup> See Letter from Sophie J. Keefer, Counsel to Conversent Communications, LLC, Willkie Farr & Gallagher, to Magalie Roman Salas, Secretary, FCC, Notification of Operation Under International Section 214 Authority of Mountaineer Telecommunications, LLC (May 11, 2000); Public Notice, Report No. TEL-00232, ITC-214-20000403-00192 (rel. May 18, 2000).

In addition, Mountaineer's wholly owned subsidiary Fibernet of Ohio, LLC ("Fibernet OH") is authorized to provide service in Ohio. Nevertheless, Fibernet OH has not yet begun to provide domestic interstate or international services. Mountaineer subsidiaries are also authorized to operate as CLECs in Kentucky but are not yet providing telecommunications services in that state.

Conversent and Mountaineer have signed a letter of intent to combine their businesses. To effectuate the combination, New Conversent has been formed. Upon consummation of the merger, Mountaineer and Conversent will become wholly owned subsidiaries of New Conversent but will remain separate legal operating entities. Likewise, all direct subsidiaries of Conversent and Mountaineer will remain unchanged and will become indirect subsidiaries of New Conversent. The proposed transaction will be seamless to consumers. The two companies will maintain their current brands and facilities after the transaction. Moreover, customers will continue to receive bills from the same operating entities from which they received bills prior to the transaction, and the rates, terms, and conditions of the services will be the same before and after the transaction. The combined companies will have 51,000 customers and more than 800 employees in ten states in the Northeast and Mid-Atlantic regions. The companies operate 300,000 local access lines, 3,900 route miles of fiber optic cable, seven voice switches, and 189 collocation arrangements.

Conversent is currently controlled by Robert C. Fanch, its co-founder, who indirectly (through his ownership interests in NEVD Holdings, LLC and the Robert C. Fanch Revocable Trust) holds over 60 percent of its shares. Mr. Fanch also has a minority ownership interest in Mountaineer of approximately 30 percent. Mountaineer's largest shareholders with current control are two private equity funds, Blackstone TWF Capital Partners, L.P. and

Blackstone TWF Family Investment Partnership, L.P., with a combined 46 percent of its shares. Post-merger, Mr. Fanch will have approximately 51 percent ownership in New Conversent, while Blackstone TWF Capital Partners, L.P. will hold approximately 11 percent of New Conversent. Seaport Capital Partners II, L.P., another private equity fund, will hold a 15 percent ownership interest in New Conversent.

No party will have clear control of a majority of the New Conversent board of directors. Mr. Fanch will control four seats of the nine seats of the Board of Directors. In addition, Mr. Fanch must consent to the choice of a fifth board member. Seaport will control two of the nine seats, and Blackstone will control one seat.<sup>6</sup> Accordingly, the Applicants seek the Commission's approval for the transfer of substantial control of the Section 214 authorizations described herein.<sup>7</sup>

This application is eligible for streamlined processing for the transfer of control of the international Section 214 authorizations because none of the restrictions of Section 63.12(c) applies to the Applicants. All Applicants are U.S. citizens, unaffiliated with any foreign carrier or with any dominant U.S. carrier whose international switched or private line services they sell. New Conversent is likewise not affiliated with any foreign carrier or dominant U.S. carrier whose services it would resell. Nor does New Conversent seek to provide switched basic services over private lines for which the FCC has not previously authorized the provision of switched services over private lines.

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<sup>6</sup> Of the remaining two seats, one will be held by the CEO of New Conversent, and the other will be filled by a minority shareholder.

<sup>7</sup> In light of his majority ownership in New Conversent and his virtual control over a majority of the board of directors of new Conversent, it is arguable that Mr. Fanch will maintain substantial control of Conversent after the transaction. Nevertheless, out of an abundance of caution, the Applicants hereby seek the Commission's approval of the substantial transfer of control of Conversent, as well as Mountaineer.

This application is eligible for streamlined processing for the transfer of control of the blanket domestic Section 214 authorizations because New Conversent will have a less than ten percent share of the interstate interexchange market, and New Conversent will provide, through its wholly owned subsidiaries post-transaction, competitive telephone exchange services, exchange access services, and other telecommunications services in geographic areas served by dominant local exchange carriers not parties to this transaction. Finally, none of the Applicants is dominant with respect to any service.

## **II. PUBLIC INTEREST CONSIDERATIONS**

The proposed merger will serve the public interest in promoting competition among telecommunications carriers. New Conversent will have greater size and financial resources thereby allowing it to benefit from economics of scale and scope. In addition, New Conversent will benefit from network efficiencies and reduced transaction costs by, for example, keeping traffic exchanged between Conversent and Mountaineer customers entirely on the New Conversent network. As a result, the proposed transaction is expected to yield both financial benefits and operational flexibility that will result in substantial improvements to consumer welfare.

## **III. INFORMATION REQUIRED BY SECTIONS 63.18 and 63.24(e)**

In accordance with Section 63.24(e)(2) of the Commission's Rules, the Applicants submit the following information in support of this Application.

### **First Transferor (Conversent):**

- (a) Name, Address and Telephone number of the Transferor:

Conversent Holdings, Inc. (FRN: 0012497442)  
313 Boston Post Road West  
Marlborough, MA 01752  
(800) 275-2088 (phone)

(508) 486-6300 (fax)  
[www.conversent.com](http://www.conversent.com)

- (b) Conversent is a Delaware corporation.
- (c) Correspondence should be sent to the following contact persons:

Scott Sawyer  
Vice President, Regulatory  
Conversent Communications, LLC  
24 Albion Road Box 5  
Lincoln, RI 02865

Tel: (401) 834-3377  
FAX: (401) 834-3350  
Email: [ssawyer@conversent.com](mailto:ssawyer@conversent.com)

With a copy to:

Thomas Jones  
Angie Kronenberg  
Willkie Farr & Gallagher, L.L.P.  
1875 K Street NW  
Washington, DC 20006

Tel: (202) 303-1000  
FAX: (202) 303-2000  
Email: [tjones@willkie.com](mailto:tjones@willkie.com)  
[akronenberg@willkie.com](mailto:akronenberg@willkie.com)

- (d) Conversent is authorized pursuant to Section 214 of the Communications Act of 1934, as amended, and 47 C.F.R. §§ 63.18(e)(2) and 63.18(e)(3) to provide global resale services between the United States and all authorized international points.<sup>8</sup>

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<sup>8</sup> See File Nos.: ITC-ASG-19991119-00721/ITC 96-303 and ITC-214-19990210-00081.



**Second Transferor (Mountaineer):**

- (a) Name, Address and Telephone number of the Transferor:

Mountaineer Telecommunications, LLC (FRN: 0012534749)  
211 Leon Sullivan Way  
Charleston, WV 25301  
Tel: 304.720.2100  
FAX: 304.720.2124

- (b) Mountaineer is a West Virginia limited liability company.

- (c) Correspondence should be sent to the following contact person:

Steve Hamula  
Director of Regulatory Affairs  
Fibernet, L.L.C.  
211 Leon Sullivan Way  
Charleston, WV 25301  
Tel: 304.720.2159  
FAX: 304.720.2121  
Email: [shamula@wvfibernet.net](mailto:shamula@wvfibernet.net)

- (d) Mountaineer is authorized pursuant to Section 214 of the Communications Act of 1934, as amended, and 47 C.F.R. § 63.18(e)(2) to provide global resale services between the United States and all authorized international points.<sup>9</sup>

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<sup>9</sup> See File No. ITC-224-20000403-00192.

**Transferee (Conversent Communications, Inc.):**

- (a) Name, address, and telephone number of Transferees:

Conversent Communications, Inc. (FRN: 0012518148)  
313 Boston Post Road West  
Marlborough, MA 01752  
(800) 275-2088 (phone)  
(508) 486-6300 (fax)

- (b) New Conversent is a Delaware corporation.

- (c) Correspondence concerning this Application should be sent to:

Scott Sawyer  
Vice President, Regulatory  
Conversent Communications, LLC  
24 Albion Road Box 5  
Lincoln, RI 02865

Tel: (401) 834-3377  
FAX: (401) 834-3350  
Email: [ssawyer@conversent.com](mailto:ssawyer@conversent.com)

With a copy to:

Thomas Jones  
Angie Kronenberg  
Willkie Farr & Gallagher, L.L.P.  
1875 K Street NW  
Washington, DC 20006

Tel: (202) 303-1000  
FAX: (202) 303-2000  
Email: [tjones@willkie.com](mailto:tjones@willkie.com)  
[akronenberg@willkie.com](mailto:akronenberg@willkie.com)

- (d) New Conversent does not hold any international Section 214 authorizations.
- (e)(3) By this Application, Applicants seek authority to the transfer of control of Mountaineer and Conversent to its new parent company, New Conversent.
- (f) Not applicable.

- (g) Not applicable.
- (h) The following entities will hold a ten percent or greater direct ownership interest in New Conversent:

- (1) NEVD Holdings, LLC  
24 Albion Road  
Lincoln, RI 02865

Percent of Equity Interest Held: 29  
Country of Citizenship: U.S.  
Principal Business: Investments  
Telecommunications Provider: No

- (2) Robert C. Fanch Revocable Trust  
360 South Gaylord Street 361  
Denver, CO 80209

Percent of Equity Interest Held: 12  
Country of Citizenship: U.S.  
Principal Business: Investments  
Telecommunications Provider: No

- (3) Seaport Capital Partners II, L.P.  
199 Water Street, 20th Floor  
New York, NY 10038

Percent of Equity Interest Held: 15  
Country of Citizenship: U.S.  
Principal Business: Private capital  
Telecommunications Provider: No

- (4) Blackstone TWF Capital Partners, L.P.  
345 Park Avenue  
New York, NY 10038

Percent of Equity Interest Held: 11  
Country of Citizenship: U.S.  
Principal Business: Investments  
Telecommunications Provider: No

The following entities will hold a ten percent or greater indirect ownership interest in New Conversent:

(1) Robert C. Fanch  
1873 South Bellaire St., Suite 1550  
Denver, CO 80222

Percent of Equity Interest Held: 51  
Country of Citizenship: U.S.  
Principal Business: Individual  
Telecommunications Provider: No

- (i) New Conversent certifies that neither New Conversent nor its subsidiaries is a foreign carrier within the meaning of Section 63.09(d) of the Commission's Rules.
- (j) New Conversent certifies on behalf of itself and its subsidiaries that New Conversent does not provide international telecommunications services to any destination country where: (i) New Conversent is or controls a foreign carrier; (ii) any entity that owns more than 25 percent of New Conversent or controls New Conversent controls a foreign carrier in that country; or (iii) two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of New Conversent and are parties to, or the beneficiaries of, a contractual relationship affecting the provision or marketing of international basic telecommunications services in the United States.
- (k) Not applicable.
- (l) Not applicable.
- (m) Not applicable.
- (n) New Conversent certifies on behalf of itself and its subsidiaries that New Conversent has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the

foreign carrier possesses market power on the foreign end of the route, and New Conversent will not enter into such agreements in the future.

- (o) The Applicants certify, pursuant to Sections 1.2001 through 1.2003 of the Commission's Rules, that they are not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.
- (p) The Applicants request streamlined processing of this Application. They qualify for streamlined processing, because no part of Section 63.12(c) applies to them. New Conversent is not affiliated with any foreign carrier or with any dominant U.S. carrier whose international switched or private line services that New Conversent seeks to resell. Nor does New Conversent provide switched basic services over private lines for which the FCC has not previously authorized the provision of switched services over private lines.

**IV. CONCLUSION**

For the foregoing reasons, the Applicants request that the Commission consent to the transfer of control of the domestic and international Section 214 authorizations from Conversent and Mountaineer to New Conversent.

Respectfully Submitted,

**Conversent Holdings, Inc.**

By: \_\_\_\_\_

Scott Sawyer  
Vice President, Regulatory  
Conversent Communications, L.L.C.  
24 Albion Road Box 5  
Lincoln, RI 02865  
(401) 834-3377 (phone)  
(401) 834-3350 (fax)

**Mountaineer Telecommunications, L.L.C.**

By:  \_\_\_\_\_

Steve Hamula  
Director, Legal/Regulatory Affairs  
211 Leon Sullivan Way  
Charleston, WV 25301  
(304) 720-2159 (phone)  
(304) 720-2121 (fax)

Dated: January 18, 2005

**IV. CONCLUSION**

For the foregoing reasons, the Applicants request that the Commission consent to the transfer of control of the domestic and international Section 214 authorizations from Conversent and Mountaineer to New Conversent.

Respectfully Submitted,

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**Mountaineer Telecommunications, L.L.C.**

By: \_\_\_\_\_

Steve Hamula  
Director, Legal/Regulatory Affairs  
211 Leon Sullivan Way  
Charleston, WV 25301  
(304) 720-2159 (phone)  
(304) 720-2121 (fax)

Dated: January 18, 2005

Conversent Communications, Inc.

By: 

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Vice President, Regulatory  
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Willkie Farr & Gallagher, L.L.P.  
1875 K Street NW  
Washington, DC 20006  
(202) 303-1000 (phone)  
(202) 303-2000 (fax)  
Its Counsel

Dated: January 18, 2005



**Attachment A**  
**Information for Consent to the Transfer of Control of the Blanket Domestic Section**  
**214 Authorizations from Conversent Holdings, Inc. and Mountaineer**  
**Telecommunications, LLC to Conversent Communications, Inc. – 47 C.F.R. §**  
**63.04(b)**

(a) Description of the Transaction

See Part I of the Application.

(b) Description of the Geographic Areas in which the Transferor and Transferee (and their affiliates) Offer Domestic Telecommunications Services

See Part I of the Application.

(c) Streamlining Information

Applicants request streamlined processing because New Conversent has less than a ten percent share of the interstate interexchange market, and New Conversent will provide, through its wholly owned subsidiaries post-transaction, competitive telephone exchange services, exchange access services, and other services in geographic areas served by dominant local exchange carriers not parties to this transaction. None of the Applicants is dominant with respect to any service.

(d) Other Commission Applications for Transaction

This is a combined application for approval of the transfer of both domestic and international Section 214 authorizations. There are no other FCC authorizations or pending applications required for this transaction.

(e) Special Consideration Because a Party is Facing Business Failure

None

(f) Separately Filed Waiver Requests

None

(g) Public Interest Considerations

*See Part II of the Application*